IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON (LOD.) NO.2572 OF 2005

Chhaganlal Kasturchand & Co. Ltd. ..Petitioner.

V/s.

Pramod P.Shahakar I.T.O. & Ors. ..Respondents.

Mr.Phiroz Andhyajuna, senior advocate with Mr.P.D. Damodar i/b. M/s.Kanga & Co. for petitioner.

Mr.Parag Vyas for respondents.

CORAM : H.L.GOKHALE AND
J.P.DEVADHAR, JJ.

DATED : 22ND NOVEMBER, 2005.

P.C. :-

1. Heard Mr.Andhyarjuna, senior advocate for the petitioner and Mr.Parag Vyas for the respondents.

2. Petitioner seeks to challenge the order dated 13th October, 2005 whereby the income of the petitioner has been assessed for the years 1991-1992 and along with interest. The liability is assessed at Rs.2,36,64,482/-. According to the petitioner, the income included one component which was interest income and it was attributable to the income from the business. According to the revenue, it was an income attributable to other source. On that footing, the

petitioner would be denied the benefit under section 80HHC of the Income Tax Act. A stay application made thereafter has also been rejected on 24th October, 2005 and, therefore, this petition has been filed.

3. Mr.Andhyarjuuna, the learned senior counsel appearing for the petitioner has pointed out that this question as to when the interest would be attributable to the income from the business or other source is under consideration in Income Tax Appeal No.500 of 2005 filed by this very petitioner and the same has been admitted. He is agreeable to clear the remaining component of the tax which comes to Rs.13.71 lakhs. He points out that the petitioner has agreed to pay this amount by 31st December, 2005 and has made and affidavit earlier on 19th September, 2005 for that purpose. He further states that from the date on which section 80HHC of the Income Tax Act came into force, the interest should be calculated and if so the amount of interest payable will be in the range of Rs.2,00,000/-. The petitioner will pay the aforesaid amount of Rs.13.71 lakhs towards the tax as also this amount of Rs.2,00,000/- by 31st December, 2005. He requested that in view of the pendency of the Income Tax Appeal No.500 of 2005, the demand on the other part of the interest should be stayed.

4. The counsel for Revenue submits that the demand is fully justified and right from the time when the tax become payable.

5. Having noted the submissions of both the counsel and also that the aforesaid issue is under consideration in Income Tax Appeal No.500 of 2005, in our opinion, the submissions made by Mr.Andhyarjuna appear to be legitimate. Accordingly, we permit the petitioner to pay the remaining tax amounting to Rs.13.71 lakhs plus additional interest of Rs.2,00,000/- on or before 31st December, 2005. Depending upon the decision of the Income Tax Appeal No.500 of 2005 and subject to the remedy of either of the parties, it will be open to the revenue to recover the balance of interest, if the revenue succeeds in the matter. In the meanwhile, the amount of interest will not be recovered. Consequently, the Demat account of the petitioner which has been frozen will be released and it will be open to the petitioner to operate the same.

6. Petition stands disposed off in the above terms with no order as to costs.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)